IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

S.T.Rev..No.76 of 2003

T.A.380/1998 OF THE KERALA SALES-TAX APPELLATE TRIBUNAL, ADDL. BENCH, KOTTAYAM.

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REVISION PETITIONER/APPELLANT/REVENUE:-

STATE OF KERALA,
REPRESENTED BY DEPUTY COMMISSIIONER (LAW),
COMMERCIAL TAXES,
ERNAKULAM

BY SPECIAL GOVERNMENT PLEADER(TAXES) SRI.V.V.ASHOKAN.

RESPONDENT: RESPONDENT/ASSESSEE:-

M/S. SERVICE AND DEVICE, HARIPAD.

BY ADV. SRI.V.P.SUKUMAR.

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 19/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.Dattu,C.J. & K.T.Sankaran,J.

S.T.Rev.No.76 of 2003

Dated, this the 19th day of June, 2007

ORDER

H.L.Dattu,C.J.

The Revenue calls in question the correctness or otherwise of the orders passed by the Kerala Sales Tax Appellate Tribunal in appeal No.T.A.380 of 1998 for the assessment year 1993-94 dated 30.3.2001.

2. The Revenue has made a simple issue as a serious issue while drafting this revision petition and also at the time of hearing of the petition. A show cause notice has been issued by the assessing authority under Section 19 of the Kerala General Sales Tax Act ("KGST Act" for short) to bring to tax the escaped turnover. After receipt of the notice, the assessee had replied the same. After receipt of the reply, the assessing authority was satisfied with the explanation offered. Thereafter, on an irregularity which was not notified in the earlier proposal made, the assessing authority proceeds to complete the proceedings under Section 19 of the Act.

3. Aggrieved by the said orders, the assessee was before the first appellate authority. The appellate authority only observes that if for any reason the assessing authority wants to bring to tax the escaped turnover which was not notified earlier to the assessee, the assessing authority ought to have issued a fresh notice under the proviso to Section 19 of the Act. Since that has not been done, the first appellate authority take exception to the orders passed by the assessing authority.

4. Revenue, aggrieved by the orders so passed by the first appellate authority, filed second appeal before the Kerala Sales-Tax Appellate

Tribunal. The Tribunal after going through the orders passed by the assessing authority under Section 19 of the Act has come to the conclusion that since the irregularity had not been notified by the assessing authority to the assessee, the assessing authority could not have completed the assessments of escaped turnover under Section 19 of the Act. Aggrieved by the findings and conclusion reached by the Appellate Tribunal, the Revenue is before us in this revision petition.

5. The Revenue has framed the following questions of law for our consideration and decision. They are as under:

> "(1) In order to revise an assessment u/s 19 of the K.G.S.T.Act is it necessary to serve a notice u/s 17(3) again in addition to the notice u/s.19?
>
> (2) Is not finding of the Appellate Tribunal is perverse, illegal and erroneous?"

6. The assessing authority before completing the proceedings under Section 19 of the Act had issued a show cause notice to the respondent-assessee and in that had pointed out certain irregularities. After receipt of the notice, the assessee has filed his explanation. The assessing authority accepts the explanation so offered. In the words of the assessing authority -

"I have examined the contentions and verified the records. He had not filed a statement of purchase of goods attracting V.A.T. at the time of original assessment. The statement filed now has been found correct".

After saying so, on yet another irregularity, which had not notified to the assessee, the assessing authority proceeds to complete the assessments

under Section 19 of the Act. This, in our opinion, could not have been done by the assessing authority for the reason that the Section itself contemplates that before an order is passed under Section 19 of the Act, the assessee must be notified of the proposal for such assessment of an escaped turnover. In the instant case, as we have already noticed, a proposal had been made and after receipt of the explanation from the assessee, the same has been accepted by the assessing authority. If for any reason the assessing authority wants to bring to tax yet another item which according to the assessing authority was irregular in the original assessment, a notice should have been issued to him as contemplated under Section 19 of the Act. Keeping all these aspects in view, the first appellate authority has allowed the appeal and the Tribunal has rejected the second appeal filed by the Revenue. We do not see any error in the orders passed by the Tribunal. Therefore, the questions of law framed by the Revenue requires to be answered against the Revenue and in favour of the assessee.

Ordered accordingly.

H.L.Dattu
Chief Justice

K.T.Sankaran
Judge

vku/-